IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 396 OF 2002.

Shri Suhas Dattaram Shikerkar,
r/o Gudo-Avedem, House No. 450. ... Petitioner.

Versus

Shree Saunsthan Shantadurga
Chamundeshwari Kudtarim Mahamaya,
At Gudo-Avedem through its
Attorney Shri Laxmikant Raghuvir
Dessai, r/o Baga, Xelvona, Quepem. ... Respondent.

Mr. A.F. Diniz, Advocate for the Petitioner.

Mr. Sudin Usgaonkar, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 16th January 2003.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith. By consent of parties, this petition is taken up for final hearing.

2. This petition has been filed against the Order, dated 31st October 2002, passed by the Civil Judge, Junior Division, Quepem, in Regular Civil Suit No. 59/1994/B. The petitioner herein had filed an application under Order VII, Rule 14, read with Section 151 of the Code of Civil Procedure seeking permission of the Court for production of the plan and to re-call P.W.3 Prakash P. Samant, for the limited purpose of proving the said plan. The said plan assumes importance in view of the fact that the said plan, which is drawn by Engineer Samant, was referred to in prayer Clause (b)

of the plaint. The said plan, according to the petitioner, had been filed alongwith the application for injunction. At the same time an amendment of the plaint was moved to incorporate the facts and a fresh prayer for permanent injunction in the prayer clause. The plan, however, could not be filed at the time of production of the documents. After the examination of the plaintiff and his witness was over, the said plan was noticed in the file and it was realized that the said plan remained to be produced. The plan, however, was not taken on record and exhibited because of the objection raised by the defendant. Therefore, the application at Exhibit 38 came to be filed seeking permission to produce the plan and for re-calling P.W.3 Prakash P. Samant for the limited purpose of proving the said plan.

3. The learned trial Court, by the Order impugned in the present petition, rejected the application on the ground that there was no specific provision for permission to re-call the witness and, since there was no abuse of process of the Court, the provision of Section 151 could not be resorted to. Since, according to the learned trial Court, the plaintiff had not produced the plan earlier, the plaintiff could not be permitted to produce the plan at this stage.

4. I have heard Mr. Diniz, the learned counsel appearing on behalf of the petitioner and Mr. Usgaonkar, the learned counsel appearing on behalf of the respondent.

5. It is not disputed before me that the said plan is essential in the event the Court grants relief to the present petitioner in the suit. It is not disputed before me that at the interlocutory stage the said plan had been produced. However, the said plan could not be filed due to inadvertence in the suit at the stage of production of documents. The ends of justice would, therefore, require that the plaintiff be permitted to produce the plan on record. In the peculiar facts and circumstances of the case, according to me, the Court should have exercised its discretion and should have permitted the plaintiff to produce the said plan. From the Order of the learned trial Court itself, it is apparent that the said plan had been produced and relied upon by the petitioner/plaintiff at the time of hearing of the application for temporary injunction. The counsel agree that the production of the plan is vital for the just decision of the suit. The ends of justice, therefore, would require that the plaintiff be permitted to produce the said plan and re-call P.W.3 Prakash P. Samant for the limited purpose of proving the said plan.

6. The Writ Petition is, therefore, allowed. The Order impugned in the petition is, hereby, quashed and set aside. Rule is made absolute in terms of prayer Clause (a) with no order as to costs.

(P.V. HARDAS)
JUDGE.

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